

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY  
COMMISSION, SHIMLA**

Review Petition No. 89/2012  
and Supplementary Review  
Petition No. 139/2012

CORAM

SUBHASH CHANDER NEGI  
CHAIRMAN

**In the Matter of:**

Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 63 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, for review of the True-Up Order of FY 2010-11, 1<sup>st</sup> APR Order for 2<sup>nd</sup> MYT Control Period and Tariff Order for FY 2012-13 dated 24<sup>th</sup> April 2012

**AND**

**In the Matter of:**

Himachal Pradesh State Electricity Board Limited  
Vidyut Bhawan, Shimla –171004

**Petitioner**

**ORDER**

**A1: Background**

**Purpose of the order**

- 1.1 The Himachal Pradesh State Electricity Board Limited (hereinafter referred to as ‘HPSEBL’ or ‘the petitioner’ had filed petitions with the Himachal Pradesh Electricity Regulatory Commission (hereinafter referred to as ‘the Commission’ or ‘HPERC’) for approval of its Revised Aggregate Revenue Requirement (ARR) for FY13 and determination of Wheeling & Retail Supply Tariff for FY13 under the 2<sup>nd</sup> MYT Control Period (FY12 to FY14). The HPSEBL had also filed Applications for the True Up of FY11 and for the True Up of the 1<sup>st</sup> MYT Control Period (FY09 – FY11).
- 1.2 The Commission, after considering the applications filed by HPSEBL and hearing the issues raised in the public hearings and going through all relevant documents available on record, and in exercise of the powers vested in it under Sections 62, 64 and 86 of the Electricity Act, 2003 (referred in brief as “the Act”), read with the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011 and the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2011, passed a consolidated order on Annual Performance Review (APR) for FY13 and True up of FY11 and 1<sup>st</sup> MYT Control Period dated 24<sup>th</sup> April, 2012 and determined the tariff for the HPESBL for FY13.

- 1.3 Being aggrieved by the aforesaid order dated 24<sup>th</sup> April, 2012, the HPSEBL filed this Review Petition under Section 94(1)(f) of the Act, read with Regulation 63 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, seeking review of the order dated 24<sup>th</sup> April, 2012 passed by the Commission.

### **Power to Review**

- 1.4 The powers of the Commission to review its own orders flow from section 94(1)(f) of the Electricity Act, 2003 and are the same as those conferred on a civil court by the Code of Civil Procedure (CPC). These have been spelt out in section 114, read with Order 47, of the CPC. The review application has to necessarily meet the requirements of section 114 and Order 47 of the CPC.
- 1.5 As per the said provisions, the specific grounds on which an order already passed can be reviewed are:-
- (a) if there are mistakes or errors apparent on the face of the record, or
  - (b) on discovery of new and important matter or evidence which, after due diligence was not within knowledge or could not be produced at the time of making the order, or
  - (c) if there exist other sufficient reasons.
- 1.6 The power of review, legally speaking, is permissible where some mistake or error apparent on the face of record is found and the error apparent on record must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. A review cannot be equated with the original hearing of a case. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise and it cannot be exercised on the ground that decision was erroneous on merits. But simultaneously the materials on record, which on proper consideration may justify the claim, cannot be ignored.
- 1.7 Hon'ble Supreme Court and various High Courts have held that review jurisdiction is not a substitute for an appeal and cannot be exercised for reconsideration of issues already decided by a Court in its original order. The error and mistake for correction in review proceeding should be apparent on the face of the record and the same should be self evident.
- 1.8 The third ground of review under Order 47 of the CPC namely "for any other sufficient reason", there needs to be new grounds other than those considered in the original order of the Commission dated the 24<sup>th</sup> April, 2012. It is a well settled principle that the expression "any other sufficient reason" will have a meaning analogous to grounds specified immediately before. This provision of Order 47 of CPC cannot be used to nullify the specific requirements stipulated in the earlier portions of the same provision.
- 1.9 Clerical or arithmetical mistakes in judgments or orders or errors arising therein from any accidental slip or omission may at any stage be corrected by the Commission under Section 152 of the CPC, either on its own motion or on the application of any of the parties. The use of word "may" shows that no party has a right to have a clerical or arithmetical mistake corrected. The matter is left to the discretion of the Court. Such discretion is required to be exercised judiciously to make corrections necessary to meet the ends of justice. The word "accidental" qualifies the slip/omission. Therefore, this provision cannot be invoked to correct an omission which is intentional, however erroneous. Because section 152 does not countenance a re-argument/rehearing on merits of fact or law, the Commission has the limited powers to correct any clerical or arithmetical mistakes in its judgments or orders, or errors arising therein from any accidental slip or omission.

## **A2: COMMISSION'S OBSERVATIONS ON VARIOUS ISSUES RAISED IN THE REVIEW PETITION**

### **Order pertaining to Issues raised by the Petitioner on True up of FY11**

#### **Larji Arrears**

- 2.1 In the Review petition, the HPSEBL has prayed to the Commission for review of the Commission's Annual Performance Review (APR) Order for FY13 dated the 24<sup>th</sup> April, 2012 for considering the Larji Arrears of Rs 26.92 Crores and carrying cost thereon as follows:

#### **QUOTE**

The Hon'ble Commission in the MYT Order dated 19th July, 2011, has allowed the recovery of Larji Arrears as follows:-

*"The Commission has decided to approve the cumulative deficit up to FY10 amounting to Rs. 55.86 Cr in the true-up for FY10. The balance arrears of Rs. 26.92 Cr shall be considered by the Commission in the true up of FY11."*

However, the Commission has not considered the amount of Rs 26.92 Cr while truing up FY 2010-11. As such, the HPSEB Limited would like to request the Commission to kindly allow this amount along with carrying cost.

#### **UNQUOTE**

- 2.2 In paragraph 5.23 of MYT Order dated 19<sup>th</sup> July, 2011, the Commission, for each year i.e. FY08 to FY11, had calculated the deficit arising consequent to the revision in the capital cost as determined in Tariff Order for Larji HEP dated the 7<sup>th</sup> July 2011. In paragraph 5.25 of its MYT Order dated 19<sup>th</sup> July, 2011, the Commission had approved Rs 26.92 Cr as arrears for FY11 and had decided that the same shall be considered at the time of true up of FY11.
- 2.3 However, in the consolidated Annual Performance Review (APR) Order dated the 24<sup>th</sup> April, 2012, that also included the True-up of FY11 and the True-up of the 1<sup>st</sup> MYT Control Period, the Commission, while truing up the expenses for FY11, had not considered the arrear amount of Rs 26.92 Cr for the reason that such had not been agitated and prayed for inadvertently by the HPSEBL in its APR petition and in its True-Up petitions.
- 2.4 For the reason that the determination of Tariff is a long drawn process, the Commission shall, therefore, consider the aforementioned Larji arrears of Rs 26.92 Crores at the time of 2<sup>nd</sup> APR Order for FY14 or during the Truing-up of FY12 in respect of which the Petitioner the HPSEBL shall include this amount to this effect in the petition to be filed before the Commission and, therefore, this amount shall become an additional part of the uncovered revenue gap of Rs 320.80 Crores shown in Table 153, page 162 of the 1<sup>st</sup> APR Order dated 24<sup>th</sup> April, 2012.
- 2.5 There is no mistake or error made by the Commission which is apparent on face of record, nor there is discovery of new and important matter or evidence which after due diligence was not within the knowledge of the Petitioner nor which could be produced by the petitioner at the time of making the Order, nor there exists other sufficient reason for the Commission to review its Order dated the 24<sup>th</sup> April, 2012. The Commission decides accordingly.

#### **Non Provisioning of Carrying Cost**

- 2.6 In the Review petition, the HPSEBL, while showing tabulated calculations, has prayed to the Commission for the Review of the Commission's Annual Performance Review (APR) Order for FY13 dated the 24<sup>th</sup> April, 2012 for allowing the carrying

cost of Rs 46.68 Crores on the true up gap of Rs 482.96 Crores as follows:-

#### QUOTE

The Commission in its 1<sup>st</sup> APR Order dated the 24<sup>th</sup> April, 2012 has stated the following:-

*“The Commission is not allowing any holding cost to HPSEBL on account of true up since no carrying cost was charged to HPSEBL during earlier years viz. FY09 and FY10 when the utility was in surplus with regard to approved vis-à-vis actual costs incurred. In FY09, as per the true up order for FY09 dated June 10, 2010, the Commission after scrutinizing the audited accounts of HPSEBL had approved a revenue surplus of Rs 288.42 Cr, as against a gap of Rs 39.74 Cr earlier approved for FY09 in the first MYT Order of May 2008. Similarly, HPSEBL was found to be in a surplus of Rs 47.12 Cr in FY10, as opposed to the revenue gap of Rs 186.38 Cr approved earlier for FY10 in the first MYT Order of May 2008.*

*As shown in the table below, the cumulative revenue gap/surplus of each of the three years comes to the following: revenue surplus of Rs 294.41 Cr for FY09, revenue surplus of Rs 78.89 Cr for FY10 and revenue gap of Rs 418.07 Cr for FY11.*

**Table 1: Cumulative revenue gap/(surplus) for the first MYT Control Period**

<b>Particulars (Rs Cr)</b>	<b>True up amount as per respective True up orders</b>	<b>Control Period true up</b>	<b>Total True up amount</b>
2008-09	(288.42)	(5.99)	(294.41)
2009-10	(47.12)	(31.77)	(78.89)
2010-11	482.96	(64.89)	418.07

*Assuming a carry-forward period of 1 year for the revenue gap/surplus of each of these three years, in the event of an appropriate holding cost being allowed/charged to HPSEBL after one year (when the audited accounts for the corresponding year would be available), the carrying cost allowable to the Board on account of revenue gap in FY11 nearly cancels out the carrying cost chargeable to the Board on account of revenue surplus in FY09 & FY10.*

*Therefore, the Commission is not allowing any carrying cost to HPSEBL on account of true up of the first MYT Control Period.”*

However, HPSEB Limited would like to submit that the Commission is wrong in considering that Revenue surplus in FY 2008-09 & FY 2009-10 nearly cancels the Revenue Gap in FY 2010-11.

HPSEB Limited would like to mention that the Commission has already accounted for the Revenue Surplus of FY 2008-09 while determining the Tariff for FY 2010-11 (Refer to page 141, clause 6.18 of Tariff Order for FY 2010-11 dated 10<sup>th</sup> June, 2010). Accordingly, lesser tariff hike was approved by the Commission for FY 2010-11 resulting in lesser recovery from the consumers by HPSEB Limited.

Further, the surplus of FY 2009-10 has also been accounted for while determining the true-up of FY 2010-11 and as such the approved Gap for FY 2010-11 is inclusive of the surplus of FY 2008-09 and FY 2009-10.

Thus, the rationale given by the Commission for non-provisioning of the Carrying Cost is actually resulting in the double accounting for the surplus of FY 2008-09 & FY 2009-10, which in fact has already been considered while determining the tariff for FY 2010-11 and subsequent true-up of 2010-11.

It is also worth mentioning here that while deemed trued-up surpluses won't be able to earn more than prevailing deposit rates of 6.5-8% at max, the trued up net gap would have to be met by taking short term loans at prevailing SBI PLR and thus would be payable at the interest rate ranging from 11.5-14%.

.....

HPSEB Limited would like to request the Commission to kindly allow the carrying cost of Rs 46.68 Crs of the trued up Gap of Rs 482.96 Crs for FY 2010-11 as tabulated above.

#### **UNQUOTE**

- 2.7 The HPSEBL's Review prayer does not sustain on the basis of merit. There is no accidental slip or omission by the Commission in its APR Order dated the 24<sup>th</sup> April, 2012.
- 2.8 True Up exercise is carried on once the True-Up petition, based upon the Audited Accounts (i.e. the actual income and expenditure), is made by the petitioner and this activity by the petitioner if coinciding with the filing of the main petition (either MYT or APR) is in the overall interest of the petitioner. The time delay in filing the True-Up petition attributable to the audited accounts (Actuals) in all probability leads to either a surplus or a gap vis-à-vis the approved figures in the past tariff orders. There is no question of double accounting as shown by the petitioner HPSEBL which is based on faulty premise by the HPSEBL.
- 2.9 Moreover, in the computation provided by the HPSEBL in its review petition, the HPSEBL has wrongly included Rs 71.51 Cr as carrying cost on the revenue gap currently estimated for FY12, which exaggerates the net carrying cost payable to the HPSEBL. True picture of the actual gap/surplus for FY12 will be apparent only after audited accounts are available for the year and it shall be duly taken into account by the Commission when it conducts a true up of FY12 next year.
- 2.10 There is no mistake or error made by the Commission which is apparent on face of record, nor there is discovery of new and important matter or evidence which after due diligence was not within the knowledge of the petitioner nor which could be produced by the petitioner at the time of making the Order, nor there exists other sufficient reason for the Commission to Review its own Orders. The Commission decides accordingly.

#### **Interest on Working Capital (including Interest on Consumer Security Deposit)**

- 2.11 In the Review petition, the HPSEBL, while showing tabulated comparison of Approved True-up of FY11 by the Commission and that which has been calculated by the HPSEBL and which ought to have been considered by the Commission in the opinion of the HPSEBL on account of Revised Working Capital, has prayed to the Commission for the Review of the Commission's Annual Performance Review (APR) Order for FY13 dated the 24 April, 2012 for allowing the Interest on working capital of Rs 6.82 Crores as against that approved by the Commission of Rs 29.69 Crores as follows:

#### **QUOTE**

The Commission while Truing Up the FY 2009-10 has stated in clause 5.48 that:-

*Interest and finance charges also include interest on normative working capital. The normative working capital is dependent on both controllable and uncontrollable parameters. Therefore, it will be trued-up to the extent of changes approved in the uncontrollable parameters.*

However, the Commission while truing up the Costs incurred in FY 2010-11 has not considered the revised working capital requirements. Accordingly, the Commission should have allowed the additional Interest & Finance Charges on account of revised working Capital as follows for FY 2010-11:-

**Table 2: Revised Working Capital for FY 2010-11**

<b>Increase in Interest on Working Capital</b>		
Add	<i>Increase in O&amp;M expenses for one month</i>	7.32
Add	<i>Increase in Receivables for two months of revenue from sale of electricity</i>	90.04
Add	<i>Increase in Maintenance spares @ 40% of the R&amp;M expense for one month</i>	0.37
Less	<i>Increase in Power purchase costs for one month.</i>	39.71
	<b>Total Working Capital</b>	<b>58.02</b>
	<i>Interest Rate</i>	11.75%
	<b>Interest on Working Capital</b>	<b>6.82</b>

HPSEB Limited would like to request the Commission to kindly consider the revised working capital requirement and accordingly allow the additional amount of Rs 6.82 Crs.

#### **UNQUOTE**

In the Supplementary Review Petition, the HPSEBL has furnished information based on actual payout of interest on consumer security deposit from FY 2008-09 to FY 2010-11 vis-à-vis interest allowed by the Commission in the MYT Order for the 1<sup>st</sup> Control Period, as follows:-

#### **QUOTE**

It is submitted that the following issues pertaining to True up for First Control Period (FY09 – FY11) / 1<sup>st</sup> APR Order could not be taken up in the above review petition as they are under scrutiny and for the current year the Reserve Bank of India notified their Interest Rates for Bank Deposit on 01.06.2012.

The actual payout of interest on consumer security deposit from FY 2008-09 to FY 2010-11 vis-à-vis the interest allowed by the Commission in the MYT Order for 1<sup>st</sup> Control Period (refer clause 5.138) is tabulated below:

**Details of interest on security deposit for 1<sup>st</sup> MYT Control Period (Rs Crores)**

Financial Year	Advanced Consumption Deposit		Interest Rate payable	Interest payable to consumers		
	Opening Balance	Closing Balance		Actually paid	Allowed by HPERC	Additional claim
FY 2008-09	149.959	169.713	6.00%	8.998	4.730	4.268
FY 2009-10	169.713	197.606	6.00%	11.120	5.210	5.910
FY 2010-11	197.606	208.584	6.00%	8.997	5.730	3.267
Total				29.115	15.670	13.445

.....

It is further submitted that while finalising and issuing of First MYT Order for the Second Control Period, the Hon'ble Commission has erred in allowing interest on Security as 6% instead of prevailing rate of 9.5% in the month of March/April resulting in financial loss of Rs 19.4 Cr approximately (....)

It is, therefore, respectfully prayed to the Hon'ble Commission to consider this additional claim of Rs 13.445 plus Rs 19.4 Cr (i.e. Rs 32.845 Cr) on account of Interest on Consumer Security Deposit as HPSEB Limited has paid them in

accordance with the legal provisions of HPERC Security Deposit Regulations, 2005 for payment of same as per actual.

#### UNQUOTE

- 2.12 As per the HPERC (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2007, assessment of working capital requirement is to be done as under:-

*“Working capital for retail supply of electricity shall consist of -*

- (a) O&M expenses for one month;*
- (b) receivables for two months of revenue from sale of electricity;*
- (c) maintenance spares @ 40% of the R&M expense for one month;*
- (d) less: consumer security deposit, if any;*
- (e) less: power purchase costs for one month.”*

- 2.13 The petitioner had not submitted this information in the true up petition filed for FY11 and/or True up petition filed for the First Control Period, on the basis of which the Commission had carried out a true up of expenses and revenue for FY 2010-11 as well as for the first MYT Control Period, in the Commission’s Order on “Approval of the Aggregate Revenue Requirement (ARR) for First APR of the Second MYT Order for the Control Period (FY12 – FY14) and True-Up Petition for the 1st MYT Control Period (FY09-FY11) and True up for FY11” dated 24 April, 2012.

- 2.14 Since the petitioner had not agitated and prayed for true-up of interest on working capital (including interest on consumer security deposit actually paid out to consumers) in its ARR and/or True up Petitions, the same had not been considered by the Commission in its cited Order.

- 2.15 Regulation 11 of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011 states the following on the matter of truing up of interest & financing charges:

*“11. True Up*

*(1) The true up across various controllable and uncontrollable parameters shall be conducted as per principles stated below: -*

*(....)*

*(b) for controllable parameters -*

*(i) any surplus or deficit on account of O&M expenses shall be to the account of the licensee and shall not be trued up in ARR; and*

*(ii) at the end of the control period –*

*I. the Commission shall review actual capital investment vis-à-vis approved capital investment.*

*II. depreciation and financing cost, which includes cost of debt including working capital (interest), cost of equity (return) shall be trued up on the basis of actual/ audited information and prudence check by the Commission.*

*(...)”*

[emphasis added]

- 2.16 In view of the information on consumer security deposit actually paid out, as has

been submitted by the petitioner, the Commission has accordingly calculated the trued-up interest on working capital on the basis of the furnished information, as shown below:-

**Table 3: True up of Interest on Working Capital for the 1<sup>st</sup> Control Period (Rs Cr)**

<b>Interest on Working Capital for FY11</b>			
<b>Details</b>	<b>As per True up for FY11 and Actual Consumer Security Deposits</b>	<b>Earlier allowed by the Commission</b>	<b>Amount of True up</b>
O&M for 1 month	60.82	53.50	
Receivables for 2 months (including impact of actual interest on consumer security deposit)	532.90	447.97	
Maintenance spares @ 40% of R&M for 1 month	1.23	0.86	
Less: One month's Power Purchase Cost	163.44	141.67	
Less: Consumer security deposit	208.58	203.13	
<b>Total Working Capital requirement</b>	<b>222.93</b>	<b>157.53</b>	
<b>Interest on Working Capital</b>	<b>27.31</b>	<b>19.30</b>	<b>8.01</b>

<b>Interest on Working Capital for FY10</b>			
<b>Details</b>	<b>As per True up for FY10 and Actual Consumer Security Deposits</b>	<b>Earlier allowed by the Commission</b>	<b>Amount of True up</b>
O&M for 1 month	50.32	50.32	0.00
Receivables for 2 months (including impact of actual interest on consumer security deposit)	418.64	315.48	103.16
Maintenance spares @ 40% of R&M for 1 month	0.68	0.68	0.00
Less: One month's Power Purchase Cost	147.49	122.78	24.71
Less: Consumer security deposit	197.61	184.66	12.94
<b>Total Working Capital requirement</b>	<b>124.54</b>	<b>59.03</b>	<b>65.50</b>
<b>Interest on Working Capital</b>	<b>15.26</b>	<b>7.23</b>	<b>8.02</b>

<b>Interest on Working Capital for FY09</b>			
<b>Details</b>	<b>As per True up for FY09 and Actual Consumer Security Deposits</b>	<b>Earlier allowed by the Commission</b>	<b>Amount of True up</b>
O&M for 1 month	47.69	47.69	0.00
Receivables for 2 months (including impact of actual interest on consumer security deposit)	379.87	346.02	33.85
Maintenance spares @ 40% of R&M for 1 month	0.53	0.53	0.00
Less: One month's Power Purchase Cost	134.34	118.29	16.04
Less: Consumer security deposit	169.71	167.88	1.84
<b>Total Working Capital requirement</b>	<b>124.04</b>	<b>108.08</b>	<b>15.96</b>
<b>Interest on Working Capital</b>	<b>15.19</b>	<b>13.24</b>	<b>1.96</b>

2.17 For its analysis, the Commission has taken into account the trued-up Operation and Maintenance Expenses (Employee Cost, A&G Expenses and R&M Expenses) and trued-up power purchase Expenses approved for each year in the respective year's true up order. The receivables of the petitioner have also been considered taking into account the trued up ARR approved for each year and the additional impact on interest on consumer security deposit, as has now been filed as 'actual' by the petitioner in its Supplementary Review Petition.

2.18 Accordingly, the Commission approves the trued-up interest on working capital for FY09, FY10 and FY11 as Rs 27.31 Cr, Rs 15.26 Cr and Rs 15.19 Cr respectively, vis-à-vis the interest on working capital allowed earlier for these years.

2.19 In addition to the above, taking into account the information now furnished by the HPSEBL on the actual interest paid out on consumer security deposits, which is a

component of the interest and finance charges approved in the ARR for each year, the Commission accordingly approves an additional amount of Rs 4.268 Crore, Rs 5.910 Crore and Rs 3.267 Crore respectively for FY09, FY10 and FY11 (Rs 13.445 Cr in total) in the Annual Revenue Requirements (ARRs) approved for the respective years.

- 2.20 However, since the petitioner had not submitted any information on actual consumer security deposits in its true-up petitions and nor had the petitioner claimed for any true up or review on these grounds, and for the reason that tariff determination is a long drawn process which for the financial year 2012-13 has already been undertaken and notified by the Commission (on the basis of all the material made available to the Commission by the petitioner at the time of tariff determination) in its Order dated the 24<sup>th</sup> April, 2012, **the Commission shall take up the matter of interest on working capital for the 1<sup>st</sup> Control Period at the time of approving the next ARR and True up petition filed by the petitioner**, in respect of which the Petitioner HPSEBL shall make specific prayer to this effect in the respective petition to be filed before the Commission and, therefore, this amount shall become an additional part of the uncovered revenue gap of Rs 320.80 Crores shown in Table 153, page 162 of the 1<sup>st</sup> APR Order dated 24.04.2012.
- 2.21 In this context, the Commission also reiterates that the power of review, legally speaking, is permissible where some mistake or error apparent on the face of record is found and the error apparent on record must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. A review cannot be equated with the original hearing of a case. **A review petition has a limited purpose and cannot be allowed to be an appeal in disguise and it cannot be exercised on the ground that decision was erroneous on merits. But simultaneously the materials on record, which on proper consideration may justify the claim, cannot be ignored.**
- 2.22 It may also be pointed out here that Hon'ble Supreme Court and various High Courts have held that review jurisdiction is not a substitute for an appeal. The error and mistake for correction in review proceeding should be apparent on the face of the record and the same should be self evident.
- 2.23 Regarding the interest on security deposit allowed for the 2<sup>nd</sup> MYT Control Period (FY12 to FY14), the Commission shall take note of the actual amount paid out in FY12 and, if found necessary, true up the interest on consumer security deposit for the 2<sup>nd</sup> MYT Control Period on the basis of actual payout in FY12.
- 2.24 There is no mistake or error made by the Commission which is apparent on face of record, nor there is this discovery of new and important matter or evidence which after due diligence was not within the knowledge of the petitioner nor which could be produced by the petitioner at the time of making the Order, nor there exists other sufficient reason for the Commission to review its Order dated 24<sup>th</sup> April, 2012. The Commission decides accordingly.

#### **Carrying Cost of Punjab State Power Corporation Limited (PSPCL) Amount**

- 2.25 In the Review petition, the HPSEBL has prayed to the Commission for the Review of the Commission's Annual Performance Review (APR) Order for FY13 dated the 24<sup>th</sup> April, 2012 for allowing the carrying of Rs 1.39 Crores recovered as penalty by the HPSEBL as a result of default committed by the Punjab State Power Corporation Limited under the banking arrangements till such time this amount gets adjusted in the future audited accounts as follows:-

#### **QUOTE**

The Commission in clause 5.65 of 1<sup>st</sup> APR order dated the 24<sup>th</sup> April, 2012 has acknowledged the following:-

*It is now claimed by the Petitioner that this amount is neither included in annual accounts of FY 10 nor in that of FY 11. The Commission is of the view that since the same is not included in the annual accounts although the same has already been considered as revenue item by the Commission in FY 10, therefore, **the Commission will adjust this amount when it gets accounted for in future in FY12 as informed by the Petitioner.***

HPSEB Limited submits to the Commission to kindly allow the carrying of Rs 1.39 Crs till such time this amount gets adjusted in accounts/approved ARR.

#### **UNQUOTE**

- 2.26 The issue was first raised by the petitioner in Review Petition No. 119/2011 for the review of the Tariff Order for FY12 dated the 19<sup>th</sup> July, 2011. The Punjab State Power Corporation Limited penalty amount was an actual receipt by the petitioner and was not included by the petitioner in the audited accounts of FY10 and came into the knowledge of the Commission only during the exercise of prudence check. Nowhere has the petitioner denied receiving such amount. The petitioner ought to have disclosed this information to the Commission during the filing of the Tariff Petition No. 224/2010 rather than withholding such information from the Commission.
- 2.27 The HPSEBL's Review prayer being based on merit does not sustain. There is no accidental slip or omission by the Commission in its APR Orders dated the 24<sup>th</sup> April, 2012.
- 2.28 There is no mistake or error made by the Commission which is apparent on face of record, nor there is discovery of new and important matter or evidence which after due diligence was not within the knowledge of the petitioner nor which could be produced by the petitioner at the time of making the Order, nor there exists other sufficient reason for the Commission to Review its own Orders. The Commission decides accordingly.

### **Order pertaining to issues raised by the Petitioner on APR for FY13**

#### **UJVNL Tariff**

- 2.29 In the Review petition, the HPSEBL has prayed to the Commission for the Review of the Commission's Annual Performance Review (APR) Order for FY13 dated the 24<sup>th</sup> April, 2012 for revising the power purchase cost for FY13 to the extent of Rs 4.93 Crores on account of revision of UJVNL tariff by the Uttarakhand Electricity Regulatory Commission vide a tariff order dated the 4<sup>th</sup> April, 2012 as follows:-

#### **QUOTE**

HPSEB Limited would like to submit that UERC had issued the generation tariff order for UJVNL Plants for FY 2012-13 on 4<sup>th</sup> April, 2012 and accordingly approved the generation tariff payable by HPSEB Limited (*refer page no 91, table 5.21 of generation tariff order of UJVNL*) as follows:-

**Table 4: Approved AFC and Primary Energy Rate Approved for HPSEB for FY 12-13**

Name of Generating station	AFC recoverable from HPSEB	Saleable Primary Energy to HPSEB	Primary Energy Rate
	Rs Crs	in MU	Ps/Kwh
Dhakrani	2.27	38.95	58.34
Dhalipur	3.44	47.67	72.18
Chibro	9.79	185.25	52.85
Khodri	6.03	85.39	70.62
Kulhal	1.67	30.57	54.78
Ramganga	0	-	-
Chilla	0	-	-
Maneri Bhali-I	0	-	-
Khatima	0	-	-
Total	23.21	387.81	59.84

The UERC has further stated the following:-

The Commission, hereby, approves the Primary Energy Rates as mentioned in Table 5.20 for supply to UPCL from the above nine generating stations for FY 2012-13, i.e. with effect from April 01, 2012. The Pooled Average Cost of generation payable by HPSEB shall be Paise 59.84/kWh with total AFC of Rs. 23.21 Crore. These rates will continue to be the approved rates for sales to UPCL and HPSEB till revised by the Commission.

However, the Commission instead of considering the new rates as per the new Tariff Orders issued by UERC for FY 2012-13, has considered the old tariff of 46.32 p/kwh, resulting in under recovery of Rs 13.52 paise per kwh. Thus considering the approved quantum of 365.17 MU, there is a disallowance of Rs 4.93 Crs.

HPSEB Limited would like to request the Commission to kindly allow additional Rs 4.93 Crs as power purchase cost for FY 2012-13 from UJVNL.

#### **UNQUOTE**

- 2.30 It is not true that the Commission has disallowed Rs 4.93 Crores based on the new Tariff Orders issued by the Uttarakhand Electricity Regulatory Commission (UERC).
- 2.31 The petitioner at the time of filing the APR petition and connected Miscellaneous Applications (please refer Table 1 of the APR Order dated 24.04.2012) had not brought this fact into the knowledge of the Commission. The Commission, at the time of finalization of APR for FY13, had considered the latest available data on the tariff of all power plants. Moreover, the tariff which has been determined for FY13 on the basis of all expense and revenue elements, including the power purchase cost, has been notified to be effective from the 1<sup>st</sup> April, 2012.
- 2.32 For the reason that the determination of tariff is a long drawn process, therefore, the Commission shall not revise its power purchase projections on the basis of the revised tariffs of any of the considered power plants. However, the Commission shall take into account all changes in generating station tariffs, among other things, and shall include the same while reviewing the power purchase cost allowed for FY13 at the time of carrying out the 2<sup>nd</sup> Annual Performance Review (APR) for FY14.
- 2.33 There is no mistake or error made by the Commission which is apparent on face of record, nor there is discovery of new and important matter or evidence which after due diligence was not within the knowledge of the petitioner nor which could be produced by the petitioner at the time of making the Order, nor there exists other sufficient reason for the Commission to Review its own Orders. The Commission decides accordingly.

## Power Purchase Cost Arrears

2.34 In the Review petition, the HPSEBL has prayed to the Commission for the Review of the Commission's Annual Performance Review (APR) Order for FY13 dated the 24<sup>th</sup> April 2012 for treating paid-out arrears of Rs 161.22 Cr by the HPSEBL to various Central Public Sector Undertakings and Power Grid Corporation of India Limited in FY12, as a pass-through in the tariff of FY13 keeping in view the financial position of the HPSEBL. While stating this the HPSEBL admits that truing up of expenses for FY12 shall be done only next year. The petition by the HPSEBL is as follows:-

### QUOTE

HPSEB Limited would like to submit that it has already paid the arrears to various CPSUs (including NTPC, NHPC, PGCIL and UJVNL in FY 2011-12 as per following details:

**Table 5: Power Purchase Arrears paid in FY 2011-12 (Rs Crores)**

Particulars	Amount (in Crores)
CGS Arrears	55.67
PGCIL Arrears	73.18
UJVNL Arrears	32.37
<b>Total Arrears Paid</b>	<b>161.22</b>

HPSEB Limited would further like to add that while the power purchase cost for FY 2011-12 will be trued up next year only, the Commission, **considering the current financial position of the HPSEB Limited**, should have considered the cost as pass through in tariff of FY 2012-13 only.

Further, HPSEBL had already submitted in review petition of 2<sup>nd</sup> MYT Order that:-

*"In the Cost of Power from Shared Project specified at sr no 7.76 for UJVNL the Commission has considered the pooled average cost of power for FY12 as 58.95 paise /KWH as approved by UERC. However, the Commission has not considered the appeal filed in the Supreme Court against the above order of UERC by the HPSEB ltd, copy of which is already supplied to Hon'ble Commission. The HPSEB ltd prays to the Hon'ble Commission to consider the average cost of power for FY12 to FY14 as 34.78 paise per KWH as per MYT Order for first Control Period till the matter is decided by Hon'ble Supreme Court.*

*That HPSEB Ltd submits in this regard that the Hon'ble Supreme Court of India has given its judgement on dated 5-12-2011, in which the order given by APTEL in appeal no 183/2009 is upheld and the application filed by HPSEB Ltd challenging the judgement of APTEL is dismissed. By virtue of this Judgement of Hon'ble Supreme Court, the HPSEB Ltd is required to release the payment of Uttrakhand Jal Vidyut Nigam on the generation tariff as per the order of APTEL in Appeal No 183/2009.*

*That in the mean time M/S UJVNL filed a execution petition in the APTEL and Hon'ble APTEL vide its judgement dated 15-12-2011 has also decided the Execution Petition No1 filed by UJVNL in appeal no 183/2009, in which a prayer was made to APTEL that HPSEB Ltd be directed to comply with the orders of Hon'ble Tribunal in appeal no 183/09. In its judgement, the Hon'ble APTEL has directed the Respondent (HPSEB Ltd) to comply with the directions given in the impugned order (UERC) and judgement of this tribunal with regard to Tariff within six weeks i.e. on or before 31st January, 2012.*

*That UJVNL has raised its bill to HPSEB Ltd amounting to Rs 32,37.40,414/- up to August 31st, 2011 on account of generation tariff as per UERC Order. The copy of letter and bill of UJVNL is enclosed herewith as annexure-P-3*

*That in view of the judgement of Hon'ble Supreme Court and Hon'ble APTEL, the HPSEB Ltd is required to comply the orders and to release the payments of UJVNL before the 31-1-2012 for the generation tariff as per the orders imparted by UERC."*

HPSEB Limited would like to request the Commission to kindly consider this huge amount of Power Purchase Arrears, especially the arrears of UJVNL resulting from the APTEL/Supreme Court order as pass through in tariff of FY 2012-13 only as no provision was there for these arrears in Tariff Order for FY 2011-12.

#### **UNQUOTE**

- 2.35 The Commission reiterates that it is governed by the regulatory review framework laid down in the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011, and in accordance with the regulations, any additional expense on account of uncontrollable items can be trued up only on the basis of audited accounts for the year, after due scrutiny and validation.
- 2.36 In order to prevent double accounting at the time of true-up of the relevant years in the future years, the Commission will not treat the paid-out arrears in FY12 as a pass-through in the tariff for FY13, till the time these expenses for FY12 are trued up on the basis of audited annual accounts in the future.
- 2.37 The HPSEBL's Review prayer does not sustain on merit. There is no accidental slip or omission by the Commission in its APR Order dated 24<sup>th</sup> April 2012 which is apparent on face of record, nor there is discovery of new and important matter or evidence which after due diligence was not within the knowledge of the petitioner nor which could be produced by the petitioner at the time of making the Order, nor there exists other sufficient reason for the Commission to Review its own Orders. The Commission decides accordingly.

#### **Power Grid Corporation of India Limited (PGCIL) Charges**

- 2.38 In the Review petition, the HPSEBL has prayed to the Commission for the Review of the Commission's Annual Performance Review (APR) Order for FY13 dated the 24<sup>th</sup> April, 2012 for approving the Power Grid Corporation of India Limited Charges at least at the level of FY 2011-12, i.e. 215 Crs approximately as follows:-

#### **QUOTE**

HPSEB Limited would like to submit that it has already submitted during the technical validation stage and subsequent replies to various observations of the Commission that the Power Grid Corporation of India Limited Charges (excluding arrears) are coming out to be in tune of approximately Rs 215 Crs and that this increase is primarily on account of issuance of revised tariff orders by Central Electricity Regulatory Commission.

However, while approving the Power Grid Corporation of India Limited Charges for FY 2012-13, the Commission has kept the charges at Rs 169.74 Crs only.

HPSEB Limited would like to submit that while the power purchase quantum is only likely to increase in FY 2012-13 as compared to FY 2011-12, the approved Power Grid Corporation of India Limited Charges will be grossly insufficient to cater for FY 2012-13.

HPSEB Limited would like the Commission to kindly approve the Power Grid Corporation of India Limited Charges at least at the level of FY 2011-12, i.e. 215 Crs approximately.

#### **UNQUOTE**

- 2.39 The HPSEBL's Review prayer being based on merit does not sustain. There is no

accidental slip or omission by the Commission in its APR Orders dated 24<sup>th</sup> April 2012.

- 2.40 As mentioned in the order dated the 24<sup>th</sup> April, 2012, the Commission would true up the PGCIL charges for each year of the Control Period based on actual amount paid at the end of each year. Therefore, the Commission does not allow any revision in the Power Grid Corporation of India Limited charges approved in the APR for FY13 at this stage.
- 2.41 There is no mistake or error made by the Commission which is apparent on face of record, nor there is discovery of new and important matter or evidence which after due diligence was not within the knowledge of the petitioner nor which could be produced by the petitioner at the time of making the Order, nor there exists other sufficient reason for the Commission to Review its own Orders. The Commission decides accordingly.

### **SLDC/ULDC Charges**

- 2.42 In the Review petition, the HPSEBL has prayed to the Commission for the Review of the Commission's Annual Performance Review (APR) Order for FY13 dated 24 April 2012 for allowing the amount pertaining to ULDC Scheme/ AMC Charges (which ranges in range of Rs 6-7 Crores per year) in case the SLDC Petition is not admitted or deferred as follows:-

#### **QUOTE**

HPSEB Limited, vide the Miscellaneous Application dated 07.04.2012 filed in case no. 137/2011 has submitted the following:-

*"In view of the fact that SLDC Petition was being filed by HP Load Dispatch Society and complete ULDC Scheme Charges along with AMC Charges were claimed by them, HPSEB Limited accordingly didn't claim same in its current petition for FY 2011-12, FY 2012-13 & FY 2013-14.*

*However, HPSEB Limited would like to submit that the ULDC Scheme Bills along with AMC Charges are being paid in full by HPSEB Limited currently.*

*As such, HPSEB Limited would like to request the Commission that in the event that SLDC Petition is not admitted/deferred for some period, then amount pertaining to ULDC Scheme/ AMC Charges may be allowed additionally in HPSEB Limited petition/order for FY 2011-12 & FY 2012-13 so that there is no defaults in payment of these bills."*

However, no mention of same is there in the APR Order.

HPSEB Limited would once again like to request the Commission that in the event that SLDC Petition is not admitted/deferred for some period, then amount pertaining to ULDC Scheme/ AMC Charges (which ranges in range of Rs 6-7 Crores per year) may be allowed additionally in HPSEB Limited petition/order for FY 2011-12 & FY 2012-13 so that there is no defaults in payment of these bills.

#### **UNQUOTE**

- 2.43 The SLDC Petition has been admitted and is in the process of being determined by the Commission for SLDC charges.
- 2.44 The HPSEBL's Review prayer being based on merit does not sustain. There is no accidental slip or omission by the Commission in its APR Orders dated the 24<sup>th</sup> April, 2012.
- 2.45 There is no mistake or error made by the Commission which is apparent on face of

record, nor there is discovery of new and important matter or evidence which after due diligence was not within the knowledge of the petitioner nor which could be produced by the petitioner at the time of making the Order, nor there exists other sufficient reason for the Commission to Review its own Orders. The Commission decides accordingly.

- 2.46 Therefore, the Commission shall allow the aforementioned Larji arrears of Rs 26.92 Crores, the true-up amount of Rs 17.99 Crores on account of truing up of interest on working capital for the 1<sup>st</sup> MYT Control Period as well as additional ARR of Rs 13.445 Cr on account of actual interest on consumer security deposit, at the time of finalizing the Second APR Order for the 2<sup>nd</sup> MYT Control Period (APR for FY14) and True-Up for FY12, in respect of which the Petitioner HPSEBL shall make specific provision to this effect in the respective petition to be filed before the Commission.

In view of the aforesaid, the review petition and supplementary review petition filed by the HPSEBL are accordingly disposed off.

-sd-

Subhash C Negi  
Chairman

Shimla, 23<sup>rd</sup> October, 2012